

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #99-34**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Applicability of T.C.A. § 67-6-225(b) to leases of aircraft.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[CORPORATION] will be the lessee of an aircraft, and is inquiring as to the application of a particular provision of the sales and use tax law.

## QUESTIONS PRESENTED

1. Is the reduced rate of tax provided for by T.C.A. § 67-6-225(b) applicable to the lease of an aircraft?
2. Is the date the lease is commenced of significance in determining the applicability of T.C.A. § 67-6-225(b)?

## RULINGS

1. No.
2. Since T.C.A. § 67-6-225(b) is not applicable, the date of the lease is of no significance.

## ANALYSIS

T.C.A. § 67-6-225(b) provides for a reduced rate of sales or use tax on aircraft, stating:

Notwithstanding any other provision of this chapter to the contrary, sales or use tax payable to the state with respect to aircraft shall be levied at the rate of sales tax levied on the sale of tangible personal property on the first one hundred thousand dollars (\$100,000) **of the sales price** of the sale or use of any single article of aircraft. The sales or use tax payable to the state with respect to aircraft shall be levied at the rate of three percent (3%) **on the sales price** in excess of one hundred thousand dollars (\$100,000) of the sale or use of any single article of aircraft. "Single article" has the same meaning as used in § 67-6-702(d).<sup>1</sup>

(Emphasis supplied.) The language in the section does not specifically levy tax on either the sale or the lease of an aircraft, but instead levies "tax payable with respect to aircraft." The actual levy of the tax is the application of the three percent rate to the "sales price."

Generally, for sales tax purposes, both an outright sale and a lease or rental of tangible personal property are subject to sales or use tax.<sup>2</sup> The definition of sale found in T.C.A. § 67-6-102(25) includes the following language:

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<sup>1</sup> This provision is effective July 1, 1999 and is repealed July 1, 2001. Public Acts of 1998, ch. 987 § 3. It should be noted that the effective date of the repeal shown in the compiler's notes in the bound volume of the Tennessee Code Annotated is in error.

<sup>2</sup> The tax on a sale is levied under T.C.A. § 67-6-202. The tax on a lease or rental is levied under T.C.A. § 67-6-204.

(A) "**Sale**" means any transfer of title or possession, or both, exchange, barter, **lease or rental**, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(Emphasis supplied.)

As noted previously, the sales and use tax is levied on both sales and leases or rental of tangible personal property. From the above-quoted definition, it appears that, unless the context requires otherwise, when the term "sale" appears in the sales and use tax statute, it should be interpreted as including "lease" or "rental" as well.

However, it is important to note that the reduced rate of tax provided for in T.C.A. § 67-6-225(b) is applied to the "sales price." No provision is made for applying the reduced rate to the "gross proceeds."

T.C.A. § 67-6-202, which levies the tax on sales, levies the tax on the "sales price." T.C.A. § 67-6-204, which levies the tax on leases or rentals, levies the tax on the "gross proceeds." Since the reduced rate of T.C.A. § 67-6-225(b) is levied on "sales price," it is logical to conclude T.C.A. § 67-6-225(b) applies only to sales and not to leases. Further, the definition of "sales price" found in T.C.A. § 67-6-102(26) states in pertinent part "[s]ales price means the total amount for which a taxable service or tangible personal property is **sold** ..." (Emphasis supplied). The definition makes no reference to rentals. Finally, a review of the legislative history of Ch. 976, Public Acts of 1998 reveals no discussion of lease or rental of aircraft.<sup>3</sup>

Since T.C.A. § 67-6-225(b) does not apply, the beginning date of the lease is immaterial. As explained above, leases are subject to the full rate of tax both before and after the effective date of T.C.A. § 67-6-225.

Owen Wheeler

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<sup>3</sup> The following tapes were reviewed: Senate Session, April 29, 1998; House Session, April 29, 1998; Senate Finance, Ways & Means Committee, April 28, 1998; House Calendar and Rules Committee, April 28, 1998; House Finance and Budget Subcommittee, April 28, 1998; and House Finance, Ways and Means Committee, April 28, 1998.

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APPROVED: Ruth E. Johnson

DATE: 12/14/99